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TRUSTS – FALL 2016

Professor Tony Duggan

COURSE OUTLINE AND READING GUIDE

Glossary

CB: *Oosterhoff on Trusts: Text, Commentary and Materials* (8th ed., 2014, Carswell, Toronto)
SM: *Trusts – Fall 2016: Supplementary Materials*

1. Introduction

1.1 Historical background

CB, pp 3-15
New Palgrave Dictionary of Economics and the Law: Equity (SM)

1.2 Classification of trusts

CB, pp 24-31

1.3 Modern Uses of the Trust

CB, pp 32-35
Langbein, "The Secret Life of the Trust: The Trust as an Instrument of Commerce" (SM)

2. Comparison between trusts and other relationships

2.1 Trust and agency

CB, pp 75-77
Trident Holdings Ltd v. Danand Investments Ltd, CB, p.77.

2.2 Trust and contract

CB, pp 80-81
Re Schebsman, CB, p.82.

2.3 Trust and debt

CB, pp 87-88.
Hydro-Electric Power Commission of Ontario Ltd v. Brown, CB, p.88.
Air Canada v. M&L Travel Ltd, CB, p.90.

2.4 Trust and bailment

CB, pp 96-97.
Elgin Loan & Savings Co. v. National Trust Co., CB, p.97.

2.5 Trust and conditional gift

CB, pp 105-106.
Re Frame, CB, p.107.
Mladen Estate v. McGuire (SM)

2.6 Trust and charge

CB, pp 198-110.
Re Oliver, CB, p.110
Re Foord, noted CB, p.623.
Noik v. Noik (SM)

2.7 Trusts and powers

CB, pp 155-158 and 149-152.
Re Lloyd, CB, p.166.
In re Weekes' Settlement, CB, p.165.
Turner v. Turner, CB, p.158.

3. Express trusts

3.1 The creation of express trusts

3.1.1 Certainty of intention to create a trust

Johnson v. Farney, CB, p.195.
Hayman v. Nicholl (SM)

3.1.2 Certainty of subject-matter

Palmer v. Simmonds (SM)
Re Beardmore Trusts (SM)
Re Walker , CB, p.211.
Re Shamas (SM)
Re Golay's Will Trusts, CB, p.213.

3.1.3 Certainty of objects

(a) General

Morice v. Bishop of Durham (SM)

(b) Fixed trusts

CB, pp 219-220.
Re Connor (SM)

(c) Uncertainty due to number of potential objects

Re Gulbenkian's Settlement Trusts, CB, p.170.
McPhail v. Doulton, CB, p.221.
Jones v. T. Eaton Co., p. 416.
Re Baden's Deed Trusts (No.2), CB, p.233.

4. Non-charitable purpose trusts

4.1 The general rule

Re Astor's Settlement Trusts, CB, p.536 (extract 1)

4.2 The perpetuities doctrine

4.2.1 Inalienability

4.2.2 Remoteness of vesting

CB, pp 580-582

4.3 Exceptions to the general rule

4.3.1 Anomalous cases

Re Astor's Settlement Trusts, CB, p.541 (extract 2)

4.3.2 Trusts indirectly for persons

Re Denley's Trust, CB, p.564.
Keewartin Tribal Council Inc. v. Thomson (City) , noted CB, pp 576-577..
Re Recher's Will Trusts (SM)
Re Lipinski's Will Trusts, noted in CB, p.575.

4.3.3 Statutory reforms

Perpetuities Act RSO 1990, s.16, CB, p.548.
Re Russell Estate, CB, p.549.

5. Constitution of trusts

5.1 Equity will not assist a volunteer/ equity will not perfect an imperfect gift

Milroy v. Lord (SM)
Richards v. Delbridge (SM)
Carson v. Wilson, CB, p.249.
Re Rose, CB, p.262.

5.2 Declaration of trust

Paul v. Constance CB, p.257.

5.3 Assigning an equitable interest

Re Wale (SM)

5.4 *The rule in* Strong v. Bird

CB, pp 253-254.
Re Wale, above

6. Formal requirements

6.1 *Trusts* inter vivos

Statute of Frauds, CB, p.294.

6.2 Testamentary trusts

Succession Law Reform Act, RSO 1990, CB, p.300.
Re Beardmore Trusts (SM)
Anderson v. Patton (SM)
MacInnes v. MacInnes (SM)
Easingwood v. Cockcroft (SM)

7. Charitable trusts

7.1 The advantages of charity

CB, pp 385-392 and 473-476

7.2 The meaning of charity

Commissioners for the Special Purposes of the Income Tax v. Pemsel noted CB, pp 397-398.
Re Laidlaw Foundation, noted CB, pp 402-403.
AYSA Amateur Youth Soccer Association v. CRA, CB, p.455.
Vancouver Regional Freenet Assn v. Minister of National Revenue noted CB, p.448.

7.3 Public benefit

7.3.1 "Public" benefit (public v.private)

Oppenheim v. Tobacco Securities Trust Co.(SM)
Re Scarisbrick (SM)
Jones v. T. Eaton Co., CB, p.416.

7.3.2 Public "benefit" (benefits v. costs)

National Anti-Vivisection Society v. Inland Revenue Commissioners (SM)
Gilmour v. Coats CB, p.425.
Re Pinion , CB, p.433.

7.3.3 Political purposes

Bowman v. Secular Society Ltd, noted CB, pp 409-412.
National Anti-Vivisection Society case, see 7.3.2, above
Positive Action Against Pornography v. MNR , noted CB, p.411.

7.4 The heads of charity

7.4.1 Relief of poverty

CB, pp 413-416.
Jones v. T. Eaton Co., CB, p.416.

7.4.2 Advancement of religion

CB, pp 412-424.
Gilmour v. Coats, see 7.3.2, above

7.4.3 Advancement of education

CB, pp 431-436.
Incorporated Council of Law Reporting for England & Wales v. Attorney-General , CB, p.436.
Vancouver Society of Immigrant and Visible Minority Women v. MNR , noted CB, pp 441-442.
News to You Canada v. MNR (SM)

7.4.4 Other purposes beneficial to the community

CB, pp 447-455.
AYSA Amateur Youth Soccer Assn v. Canada Revenue Agency, CB, p.455.
News to You Canada v. MNR (SM)

7.5 Imperfect charitable trusts: the exclusively charitable requirement

CB, pp 466-471.
Morice v. Bishop of Durham, see 3.1.3, above
Vancouver Society of Immigrant and Visible Minority Women v. MNR, see 7.4.3, above
Brewer v. McCauley , noted CB, p.467.

7.6 The cy-pres *doctrine*

7.6.1 Introduction

CB, pp 477-480.

7.6.2 Initial impossibility or impracticality

Christ Church v. Canada Permanent Trust Co. (SM)

CB, pp 493-495.
Re Spence's Will Trusts , CB, p.495.

7.6.3 Supervening impossibility or impracticality

CB, pp 500-501.
Re Fitzpatrick, CB, p.501.

7.6.4 Discriminatory trusts

CB, pp 506-507.
Canada Trust Co. v. Ontario (Human Rights Commission), CB, p.507.
Royal Trust Corporation of Canada v. University of Western Ontario (SM)
Spence v. BMO Trust Company (SM)

7.6.5 Administrative scheme-making

Sidney and North Saanich Memorial Park Society v. British Columbia (Attorney General) (SM)

8. Resulting trusts

8.1 Failure of express trusts

8.1.1 General

CB, pp 595-598.
Hodgson v. Marks, CB, p.590.

8.1.2 Trust or gift?

Re Barrett, CB, p.598.
Re Abbott Fund Trusts (SM)

8.1.3 The public appeal cases

Re Abbott Fund Trusts, above
Re Gillingham Bus Disaster Fund (SM)
Trustee Act, RSNS 1989, s.52 (SM)

8.1.4 Pension trusts

Schmidt v. Air Products of Canada Ltd, CB, p.603.

8.1.5 The *Quistclose* trust

Barclays Bank Ltd v. Quistclose Investments Ltd (SM)
Twinsectra Ltd v. Yardley, CB, p.555.
Ontario (Training, Colleges and Universities v. Two Feathers Forest Products LLP (SM)

8.2 Apparent gifts

8.2.1 Voluntary transfer resulting trusts

Pecore v. Pecore CB, p.659.
Madsen Estate v. Saylor (SM)
Sawdon Estate v. Watch Tower Bible and Tract Society of Canada (SM)
Mroz v. Mroz (SM)
Clemens v. Clemens Estate (SM)
Standing v. Bowring (SM)
Neazor v. Hoyle, CB, p.655.
Family Law Act, RSO 1990, s.14, CB, p.680.
Clark Drummie & Co., v. Ryan , CB, p.681.

8.2.2 Purchase money resulting trusts

Calverly v. Green (SM)
Dewar v. Dewar (SM)

8.2.3 Illegality
Goodfriend v. Goodfriend, noted CB, p.693.
Maysels v. Maysels, CB, p.695.
Tinsley v. Milligan (SM)
Nelson v. Nelson (SM)
Korman v. Korman (SM)

9. Constructive trusts

9.1 Nature of the constructive trust

9.2 The constructive trust to reverse unjust enrichment

Pettkus v. Becker, noted CB, pp 714-716.
Kerr v. Baranow (SM)
Haigh v. Kent (SM)
Ellingsen (Trustee of) v. Hallmark Ford Sales (SM)
Chase Manhattan Bank N.A. v. Israel-British Bank (London) Ltd, CB, p.742.
Duggan, "Constructive Trusts in Insolvency: A Canadian Perspective" (SM)

9.3 The constructive trust to prevent wrongdoing

Keech v. Sandford , noted CB, p.712-713.
International Corona Resources Ltd v. Lac Minerals Ltd, CB, p.773.
Soulos v. Korkontzilas, CB, p.724.
Attorney-General for Hong Kong v. Reid (SM)

9.4 The constructive trust to perfect intention

Lysaght v. Edwards, noted CB, p.853.
Re Rose, noted CB, pp 864-865 and see 5.1, above

10. Fiduciary obligations

10.1 Introduction

10.2 Purchase of trust property

CB, pp 794-797.
Re Hourigan (SM)
Holder v. Holder , noted CB, pp 800-801.

10.3 Sale to trust

CB, pp 804-805.
National Trust Company Ltd v. Osadchuk (SM)

10.4 Diversion of commercial opportunities

Keech v. Sandford, see 9.3, above
Boardman v. Phipps, noted CB, pp 807-809.
Tornroos v. Crocker , CB, p.853.
Peso Silver Mines Ltd v. Cropper (SM)
Canadian Aero Service Ltd v. O'Malley , CB, p.868 (p.813)

11. Duties of trustees

11.1 Exercise of discretion

CB, pp 971-973.

11.1.1 Deadlock

Tempest v. Lord Camoys (SM)
Re Wright, CB, p.942.
Re Brockbank; Ward v. Bates, CB, p.912.

11.1.2 Improper purpose

Fox v. Fox Estate, CB, p.973.
Spence v. BMO Trust Company (SM)

11.1.3 Failure to consider

Turner v. Turner, CB, p.158 and see 2.7, above

11.2 The duty of care and skill

Fales v. Canada Permanent Trust Co., CB, p.147 (extract 1) and p.1121 (extract 2)
Penman v. Penman (SM)

12. The duty to account and provide information

Sandford v. Porter, CB, p.124
Schmidt v. Rosewood Trust Ltd, CB, p.128

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